ATTACHMENT 8

BEFORE THE
PUBLIC SERVICE COMMISSION OF MARYLAND

IN THE MATTER OF	)	
	)	
Complaint of CloseCall America, Inc.	)	
	)	**Case No. ____**
	)	
	)	

REPLY TO THE ANSWER OF VERIZON MARYLAND INC.

In response to the Answer of Verizon Maryland Inc. ("Verizon") filed on May 28, 2002, CloseCall America, Inc. ("CloseCall") files the following reply.

In its Complaint, CloseCall petitioned the Public Service Commission of Maryland ("Commission") to direct Verizon Maryland Inc. ("Verizon" or "VZ-MD") to provide wholesale access to voice messaging and digital subscriber line ("DSL") services that can be provided on loops that are also used for competitive local exchange carrier ("CLEC") services. In its Complaint, CloseCall explained to the Commission that Verizon had impermissibly tied its own enhanced and local exchange services by refusing to provide voice mail and DSL services on loops over which its competitors provide local exchange services. CloseCall also explained that Verizon punishes consumers who switch to competitive local exchange services by abruptly disconnecting pre-existing voice messaging and DSL services.

CloseCall filed its Complaint because these practices are harmful to competitive entry and contrary to consumer interests. In its Answer, Verizon fails to address these fundamental issues, and has instead attempted to redirect the Commission's attention from the substance of this matter by making baseless and misleading arguments regarding the Commission's authority and the state of the local telecommunications market in Maryland.

I. Verizon's Answer Ignores the Substance of the Complaint and Makes Misleading and Unsupported Arguments.

In the Complaint, we explained that Verizon makes its voice messaging and line-sharing DSL services available in Maryland, but only to consumers who choose Verizon as their local exchange carrier. This arbitrary restriction substantially undermines CLEC competitive market entry efforts and causes harm to Maryland consumers by preventing them from obtaining local exchange service from the provider of their choice because doing so would cause the loss of their existing voice messaging and DSL services.[1]

In its Answer, Verizon asserts that the "voice messaging market is highly competitive and both CLECs and consumers already have a variety of market options for obtaining voicemail functionality."[2] Verizon also maintains that there is no valid DSL issue before the Commission because Verizon's DSL is federally tariffed and available for resale pursuant to the FCC's regulations.[3] Unfortunately, these arguments do not address the points raised in the Complaint. The issue before the Commission is Verizon's callous and manipulative treatment of its existing voice messaging and DSL customers who seek to obtain local exchange service from a competitive carrier, and the specific anti-competitive effects of such customer treatment.[4] Verizon's statements regarding the number of vendors of voicemail services and equipment found in Baltimore County through its yellow pages are not at all relevant to the matter which is before the Commission.[5] Rather, the focus of our Complaint is Verizon's abrupt disconnection

[1] CloseCall Complaint at 3.

[2] Verizon Answer at 1.

[3] Verizon Answer at 12.

[4] As discussed in the Complaint, Verizon's restrictions on customer access to its voice messaging products discourages customers from seeking competitive local telecommunications services. CloseCall Complaint at 3-4.

[5] Verizon Answer at 3-4.

of its existing voice messaging customers who change to other local exchange carriers and its unfair customer winback practices, both of which affect consumers in every part of Maryland.[6] The existence of any number of voice messaging equipment providers, regardless of where they are located, does not mitigate in any way the consumer and competitive harm we discuss in the Complaint.

Similarly, Verizon completely disregards the substance of the DSL issues that we raised in the Complaint – Verizon's policy of requiring that its line-sharing DSL customers also subscribe to its local telephone service and practice of arbitrarily disconnecting existing Verizon DSL customers if those customers switch to a competitive local service provider. Ironically, the FCC decision cited by Verizon in defense of its restrictive DSL policies supports the very premise of our Complaint. Specifically, the FCC stated that "Verizon's policy of limiting resale of DSL services to situations where Verizon is the voice provider severely hinders the ability of other carriers to compete."[7] As one might expect, Verizon's policy with regard to voice messaging services has a similar anti-competitive effect.

Verizon casually dismisses CloseCall's statements regarding Verizon's problematic and potentially anti-competitive customer transfer practices as "isolated" and "unsupported anecdotes."[8] This hardly constitutes an appropriate response to the Commission's Order to answer our Complaint. Moreover, Verizon's generalized claims regarding its corporate "policy" and technical training practices fail to address the real-life problems that real-life customers have as a result of Verizon's apparent failure to put such policies into practice. Specifically, nowhere

[6] Verizon Answer at 1, 3-5.

[7] *See* Application of Verizon New York Inc. et al for Authorization to Provide In-Region, InterLATA Services in Connecticut, 16 FCC Rcd 14147, 14162, at para. 32 (2001).

[8] Verizon Answer at 6-7.

in its Answer does Verizon explain, justify or defend its policy of disconnecting voice messaging and DSL customers without notice and its refusal to provide voice messaging and line-sharing DSL services to customers who do not also subscribe to Verizon's local exchange service. Yet denying access to such services are primary tactics that Verizon uses to thwart local competition and customer choice in Maryland.

Moreover, Verizon's argument that the Simplified Message Desk Interface ("SMDI") link and other voice messaging facilities provide sufficient CLEC voice messaging capability does not address the issues confronted by resellers, such as CloseCall, for whom SMDI links provide no value in the absence of the associated voice mail functionality. The availability of SMDI and other individual facilities do not alleviate the competitive harm and customer inconvenience associated with requiring customers to disconnect their existing Verizon voice messaging service if they choose to subscribe to a competitive local exchange service.[9]

II. Contrary to Verizon's Unsupported and Misleading Arguments, the Commission Does Not Lack Jurisdiction Over Local Telecommunications in Maryland.

As we explained in detail in the Complaint, the Commission has sufficient jurisdiction, as well as a statutory mandate, to curtail Verizon's improper practice of tying voice messaging and DSL services to its local exchange services.[10] Nevertheless, Verizon claims that the Commission "is not the proper forum to seek an obligation to resell voicemail" and argues that the FCC has somehow preempted state authority over voice messaging and DSL services. Verizon, however,

[9] As noted in the Complaint "in order to switch to a new voice messaging system, customers must set up new passwords, greetings, and learn to operate a voice messaging system that may be substantially different from the one they presently use. This additional inconvenience and burden can be a substantial disincentive for customers, especially small business and residential, who might otherwise subscribe to competitive local services. CloseCall Complaint at 5.

[10] CloseCall Complaint at 7-9.

does not attempt to reconcile its arguments with the actions taken by the New York, Rhode Island, and Vermont state commissions and the Delaware legislature, all of which currently require Verizon to provide wholesale access to voice messaging services.[11]

Moreover, Verizon's tortured argument that the Commission lacks the authority to regulate voice messaging services is misleading. Specifically, the Commission's jurisdiction is established in §2-112 of the Public Utility Companies Article, Annotated Code of Maryland, which clearly states that "the Commission has jurisdiction over each public service company that engages in or operates a utility business in the State."[12] As we discussed in the Complaint, the Commission has "substantial latitude" to ensure that public utilities operate in a manner that serves the public interest pursuant to §2-113 of the Public Utility Companies Article, Annotated Code of Maryland.[13] It is also well established that the Commission has the authority to place specific requirements and duties on telecommunications carriers, such as Verizon, as well as the broad authority to regulate Verizon in a manner that best serves the interests of Maryland consumers.[14] Consequently, there is no question that under current Maryland law, the Commission has ample jurisdiction to provide to CloseCall the relief that it seeks in the Complaint.

Finally, Verizon's allegation that the Commission lacks authority regarding Verizon's federally-tariffed DSL services also falls short of its intended mark. Specifically, Verizon's federal Tariff F.C.C. No. 20 does not mandate that Verizon DSL subscribers coincidentally subscribe to Verizon's local exchange services. Consequently, nothing prevents the Commission

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[11] CloseCall Complaint at 10.

[12] Public Utility Companies Article §2-112.

[13] Public Utility Companies Article §2-113.

from requiring, as a matter of public interest and local competition, that Verizon refrain from arbitrarily terminating DSL services subscribed to by customers switching to other local exchange carriers. Moreover, Verizon's continued provision of such services to customers according to the terms of the relevant Tariff would mitigate the anti-competitive effect of Verizon's current practice of linking customer access to local exchange and DSL services. Finally, contrary to Verizon's assertion that state commissions have no authority regarding the provision of DSL services to consumers, in March 2001 the California Public Service Commission ("CPSC") ordered that NorthPoint Communications, Inc. be enjoined from discontinuing its DSL service to California customers unless it first provided 30 days' notice of termination, pursuant to California regulations.[15] In that case, NorthPoint's DSL service termination resulted from its bankruptcy proceeding which commenced after Verizon cancelled its pending merger with NorthPoint.

In sum, Verizon's Answer provides no substantive justification for refusing to provide its voice messaging and line-sharing DSL services to customers who subscribe to competitive local exchange services or for its sudden termination of existing voice messaging and DSL services subscribed to by customers who switch to competitive local exchange carriers. Consequently, the Commission should direct Verizon to provide to its competitors wholesale access to voice messaging and DSL services that can be provided on the same loop used by a CLEC to provide local service in the same manner that call waiting and caller-ID services are handled, or in the

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[14] CloseCall Complaint at 8.

[15] NorthPoint discontinued its DSL service to California customers without providing the required 30 days' notice of termination. The California Commission directed NorthPoint to cease efforts to shut down its network, and to take all necessary steps to restore service pending appropriate notice of termination. Calif. Pub. Util. Decision No. 01-04-008 (2001).

alternative, to provide directly to consumers retail access to such services on a stand-alone basis, without any disruption and/or lost functionality.

Respectfully submitted,

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